

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**MODESTO IRRIGATION DISTRICT
(MID),**

Plaintiff - Appellant,

v.

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Defendant - Appellee.

No. 04-15778

D.C. No. CV-98-03009-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted December 8, 2005**
San Francisco, California

Before: **BRUNETTI, KOZINSKI** and **SILVERMAN**, Circuit Judges.

Under California law, Modesto Irrigation District (MID) is not a “municipal corporation” as that term is used in Article XI, section 9(a) of the California

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Constitution. See Turlock Irrigation Dist. v. Hetrick, 84 Cal. Rptr. 2d 175, 176 (Cal. Ct. App. 1999) (“[T]he specific statutes limiting the powers and purposes of irrigation districts take priority over the general provisions applicable to all municipal corporations.”); id. at 177 (“Irrigation districts are sometimes referred to as municipal corporations, but it seems that they are not municipal corporations in the strict or proper sense of that term as it is usually understood”). Thus, it has no state constitutional right to furnish electric service in Contra Costa County, which is outside its boundaries.

Although MID is permitted to provide electric service in Contra Costa County, see Cal. Water Code § 22120, it can do so only “if it first requests and receives written approval from the [Local Agency Formation Commission],” see Cal. Gov’t Code § 56133(a). MID did not request or receive such approval. It is therefore not a lawful competitor of Pacific Gas and Electric Company (PG&E) in Contra Costa County, and could not have suffered an antitrust injury at the hands of PG&E. See Vinci v. Waste Mgmt., Inc., 80 F.3d 1372, 1376 (9th Cir. 1996).

AFFIRMED.